

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
September 12, 2007 Session

**IN RE ESTATE OF MARGIE MARY ANDERSON, DECEASED**

**A Direct Appeal from the Chancery Court for Robertson County  
No. 18748     The Honorable Laurence M. McMillan, Chancellor**

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**No. M2006-02303-COA-R3-CV - Filed November 16, 2007**

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After procuring an administrator of the estate of an elderly decedent, the Tennessee Bureau of TennCare filed a claim against the estate seeking reimbursement of properly paid benefits to the nursing facility on decedent's behalf. The administrator excepted to the claim, and the probate master issued an opinion barring the claim as untimely under T.C.A. §30-2-310(b) (2001). The chancery court adopted and confirmed the probate master's opinion. The bureau appeals. We affirm.

**Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Chancery Court Affirmed**

W. FRANK CRAWFORD, J. delivered the opinion of the court, in which ALAN E. HIGHERS, P.J., W.S. and DAVID R. FARMER, J., joined.

Robert E. Cooper, Jr., Attorney General and Reporter; L. Vincent Williams, Deputy Attorney General for Appellant, Tennessee Bureau of TennCare

James M. Balthrop of Springfield, Tennessee for Appellee, Estate of Margie Mary Anderson, Deceased

**OPINION**

The facts in this case are undisputed. On January 1, 1994, at the age of sixty-five, Margie Mary Anderson ("Decedent") became the beneficiary of medical assistance paid through the Tennessee Bureau of TennCare ("Bureau," or "Appellant"). Prior to Ms. Anderson's death, benefits in the amount of \$99,345.81 were paid to her medical providers on her behalf. Ms. Anderson died on February 21, 2004.

On June 3, 2005, in accordance with T.C.A. § 30-1-301 *et seq.*, the Bureau filed a complaint to appoint an administrator for Ms. Anderson's estate (the "Estate," or "Appellee"). As provided for in T.C.A. § 30-1-303, the complaint named Opal D. Pedder, William Roy Anderson, and Wanda

Kay Smith as defendants. Letters of Administration were issued to James Balthrop on July 15, 2005. There was no publication or other notice to creditors.

On November 14, 2005, the Bureau filed a claim against the Estate for \$99,345.81. This claim was made for properly paid medical benefits pursuant to T.C.A. § 71-5-116(c)(1) (2004), which reads as follows:

(c)(1) There shall be no adjustment or recovery of any payment for medical assistance correctly paid on behalf of any recipient pursuant to this part from the recipient's estate, except in the case of a recipient who was fifty-five (55) years of age or older at the time the recipient received medical assistance or services pursuant to this part. In that case, adjustment or recovery from the recipient's estate may be pursued only after the death of the individual's surviving spouse, if any, and only at a time when the individual has no surviving child who is under eighteen (18) years of age or no surviving child, as defined in § 1614 of the Social Security Act, who is blind or permanently and totally disabled, or a child who became blind or permanently and totally disabled after reaching majority, if the TennCare bureau and the personal representative agree, or, in the event of a disagreement, the court, after de novo review, finds that repayment would constitute an undue hardship to the blind or disabled child.

Pursuant to this statute, the Bureau filed the Affidavit of Jeanie Taylor, Administrative Services Assistant with the Estate Recovery Unity for the Bureau of TennCare, which Affidavit states that Ms. Anderson was over fifty-five years of age at the time she received the medical benefits, that she was not survived by a spouse or any children under the age of twenty-one or who were blind or permanently and totally disabled.

On November 18, 2005, the Administrator of the Estate filed an exception to the Bureau's claim, alleging that such claim "was not filed within twelve (12) months of the date of death of the deceased and is therefore time barred, pursuant to Tennessee Code Annotated § 30-2-310." The Administrator of the Estate did not otherwise dispute the validity of the Bureau's claim.

On January 11, 2006, the matter was heard by the Probate Master. On February 6, 2006, the Probate Master issued his Opinion, holding that the Bureau's claim was time-barred under T.C.A. § 30-2-310(b). On February 10, 2006, the Bureau filed an Objection to the Master's Report, alleging that, "where no probate estate has been previously opened[,] the time for filing claims does not begin until the estate is opened...." On September 21, 2006, the Chancery Court issued an Order adopting and confirming the Probate Master's report barring the Bureau's claim against the Estate. The Bureau filed a timely notice of appeal. The sole issue before this Court is whether the trial court erred in barring the Bureau's claim as untimely filed.

Because this case was tried by the court sitting without a jury, we review the case *de novo* upon the record with a presumption of correctness of the findings of fact by the trial court. Unless the evidence preponderates against the findings, we must affirm absent error of law. *See* Tenn. R.App. P. 13(d). As noted above, the facts in this case are undisputed. The sole issue before us involves statutory interpretation and, as such, is a question of law. Consequently, our review of the trial court's order is *de novo* upon the record with no presumption of correctness accompanying the trial court's conclusions of law. *See* Tenn. R. App. P. 13(d); *Waldron v. Delfss*, 988 S.W.2d 182, 184 (Tenn.Ct.App.1998); *Sims v. Stewart*, 973 S.W.2d 597, 599-600 (Tenn.Ct.App.1998).

In construing statutes, the Court's role is to ascertain and give effect to the legislative intent without unduly restricting or expanding a statute's coverage beyond its intended scope. *Sallee v. Barrett*, 171 S.W.3d 822 (Tenn.2005); *McGee v. Best*, 106 S.W.3d 48 (Tenn.Ct.App.2002). In *McGee*, the Court said:

The rule of statutory construction to which all others must yield is that the intention of the legislature must prevail. *Mangrum v. Owens*, 917 S.W.2d 244, 246 (Tenn.Ct.App.1995)(citing *Plough, Inc. v. Premier Pneumatics, Inc.*, 660 S.W.2d 495, 498 (Tenn.Ct.App.1983); *City of Humboldt v. Morris*, 579 S.W.2d 860, 863 (Tenn.Ct.App.1978)). “[L]egislative intent or purpose is to be ascertained primarily from the natural and ordinary meaning of the language used, when read in the context of the entire statute, without any forced or subtle construction to limit or extend the import of the language.” *Id.* (citing *Worrall v. Kroger Co.*, 545 S.W.2d 736, 738 (Tenn.1977)). The Court has a duty to construe a statute so that no part will be inoperative, superfluous, void or insignificant. The Court must give effect to every word, phrase, clause, and sentence of the Act in order to achieve the Legislature's intent, and it must construe a statute so that no section will destroy another. *Id.* (citing *City of Caryville v. Campbell County*, 660 S.W.2d 510, 512 (Tenn.Ct.App.1983); *Tidwell v. Collins*, 522 S.W.2d 674, 676 (Tenn.1975)).

*Id.* at 64.

In *In Re: Estate of Daugherty*, 166 S.W.3d 185 (Tenn. Ct. App. 2004), this Court addressed the applicability of the statute of limitations to claims against estates by the Bureau. The *Daugherty* Court held that there are two limitations periods that apply to creditor's claims under Tennessee probate law. First, T.C.A. § 30-2-306 and § 30-2-307 establish a four month limitations period applicable to creditor's claims.<sup>1</sup> These statutes were applicable in the *Daugherty* case, and the Court

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<sup>1</sup> We note that T.C.A. § 30-2-307(a)(1)(B) contains an exception to the four-month statute of limitations, to wit: “If a creditor receives actual notice less than sixty (60) days before the date which is twelve (12) months from the  
(continued...) ”

specifically held that the four month statute of limitations contained therein did not apply to the Bureau under the doctrine of *nullum tempus occurrit regi*, i.e. time does not run against the king, to wit:

The courts of this state have consistently held that, when the State of Tennessee, acting through its various departments, files a claim in a governmental capacity, statutes of limitations do not bar the state's claim *absent an express legislative directive to the contrary*.

The common law doctrine of *nullum tempus occurrit regi*, which is literally translated as “time does not run against the king,” prevents an action brought by the State from being dismissed due to the expiration of the statutory period of limitations normally applicable to the specific type of action. This doctrine has been justified on the ground “that the public should not suffer because of the negligence of its officers and agents ...” *State ex rel. Board of University & School Lands v. Andrus*, 671 F.2d 271, 274 (8th Cir.1982).... This doctrine is not to be lightly regarded, as we have repeatedly stated that statutes of limitations are looked upon with disfavor in actions brought by the State, and *will not be enforced in the absence of clear and explicit statutory authority to do so. Dunn v. W.F. Jameson & Sons, Inc.*, 569 S.W.2d 799, 802 (Tenn.1978); *Anderson v. Security Mills*, 175 Tenn. 197, 133 S.W.2d 478 (1939).

*Daugherty*, 188 S.W.3d at 191 (Emphasis added).

The second limitations period that applies to creditor’s claims against an estate is found at T.C.A. § 30-2-310. This is the statute at issue in the present case and it provides, in pertinent part, as follows:

(a) All claims and demands not filed with the probate court clerk, as required by the provisions of §§ 30-2-306 -- 30-2-309, or, if later, in which suit shall not have been brought or revived before the end of twelve (12) months from the date of death of the decedent, shall be forever barred.

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<sup>1</sup>(...continued)

decedent’s date of death or receives no notice, such creditor’s claim shall be barred unless filed within twelve (12) months from the decedent’s date of death.” As discussed *infra*, the present action does not trigger this exception. Rather, the statute of limitations applicable to the case at bar is T.C.A. § 30-2-310(b), which specifically addresses claims filed by the State. Tennessee courts recognize that a specific statute will apply rather than a general statute when there is a conflict between the two statutes. *Arnwine v. Union County Bd. of Educ.*, 120 S.W.3d 804, 809 (Tenn.2003); *Brewer v. Lincoln Brass Works, Inc.*, 991 S.W.2d 226, 229-30 (Tenn.1999); *In re Harris*, 849 S.W.2d 334, 337 (Tenn.1993).

(b) Notwithstanding the provisions of subsection (a), all claims and demands not filed *by the state* with the probate court clerk, as required by the provisions of §§ 30-2-306--30-2-309, or, if later, *in which suit shall not have been brought or revived before the end of twelve (12) months from the date of death of the decedent, shall be forever barred*. This statute of limitations shall not apply to claims for state taxes. Such claims shall continue to be governed by § 67-1-1501.

(Emphasis added).

The holding in *Daugherty* hinges upon this Court's finding that § 30-2-306 and § 30-2-307 contain no clear and explicit language from which to conclude that the claims of the State, acting in its official capacity, are included in the four-month limitations period. However, in the instant case, the applicable statute is T.C.A. § 30-2-310(b), *supra*, which, by its plain language, does include claims made "by the state" against an estate in the twelve month limitations period. This is a distinction that the *Daugherty* Court notes:

The chancellor's order relied on section 30-2-310 to find that the Bureau's claim was time barred. The chancellor was apparently relying on the language in subsection (b), where the legislature *expressly made the twelve (12) month limitations period applicable to the state....*

*Daugherty*, 166 S.W.3d 194, note 4 (Emphasis added).

In its brief, the Bureau asserts, *inter alia*, that T.C.A. §30-2-501(a) extends the twelve month statute of limitations in this case. T.C.A. §30-2-501(a) reads:

Other than by filing of claims or the revivor of actions pending against the decedent at the time of the decedent's death, no suits shall be brought or other action taken by any creditor against the estate until the expiration of three (3) months from the issuance of letters, and nothing herein shall be so construed as to permit the filing of claims of revivor of pending actions, or institution of suits against the personal representative after twelve (12) months from the date of death of the decedent, except, however, for insolvency proceedings or claims filed by creditors within the period prescribed in the notice published or posted in accordance with § 30-2-306(c).

While we agree with the Bureau's interpretation of this statute to extend the twelve-month filing period in cases of insolvency, the statute is not applicable to the case at bar. The findings of the Probate Master, which were specifically adopted by the trial court, state that "there [is] no notice of insolvency on the record in this estate." We agree. There is nothing in this record from which to conclude that this was an insolvency proceeding so as to trigger the exception found at

T.C.A. § 30-2-501(a). Furthermore, this is not a claim for recoupment of state taxes so as to trigger the exception to the twelve month statute of limitations found at § 30-2-310(b), *supra*. And, with respect to the Bureau's argument that T.C.A. § 30-2-321 controls the computation of time in this case, we disagree. By its plain language, T.C.A. § 30-2-321 applies only when time is computed from the date of the notice to creditors, to wit:

Wherever in this title any period of time is required to be computed from the date of the notice to creditors, such computation shall be made from the date of the first publication of the notice (in case of published notices) or from the date of the posting of the notice (in case of posted notices), as shown by the filed proof of the publication or of the posting of such notices as required by § 30-2-306.

Here, it is undisputed that there has been no notice to creditors. Consequently, T.C.A. § 30-2-321 is not triggered. Rather, this case involves a T.C.A. § 71-5-116(c) **claim** to recoup properly paid medical benefits from an estate. Contrary to the Bureau's argument, T.C.A. § 71-5-116(c) does not contain a limitations period for these filings; rather, this statute dictates only the circumstances under which the state may make a claim against an estate for properly paid medical benefits (i.e. decedent was fifty-five or older when medical assistance was received, the decedent has no surviving spouse, nor any minor or disabled children). Consequently, the applicable statute of limitations is found at T.C.A. § 30-2-310(b), *see supra* note 1. T.C.A. § 30-2-310 was amended in 2000 to add subsection (b), which specifically includes claims filed by the state in the twelve month statute of limitations. By its plain language, the only State claims that are excepted from this one year statute of limitation are those claims for taxes. While we concede that the Bureau is acting in its official capacity in attempting to recoup medical payments from this Estate, because the statute specifically includes state claims in the limitations period, the case at bar is distinguishable from *Daugherty*.

On appeal, the Bureau interprets T.C.A. § 30-2-310(b) to apply only "to the time for filing suit, rather than to the filing of claims" against an estate. We disagree. The statute clearly sets out that it applies to "all claims and demands" against an estate. While we concede that the "if later" language in subsection (b)—i.e., "all claims and demands not filed by the state with the probate court clerk, as required by the provisions of §§ 30-2-306 – 30-2-309, or, *if later...*"—may imply that claims and demands can be filed later than the four-month period found in T.C.A. §§ 30-2-306 – 30-2-307 (which would be in line with the exceptions to the four-month time-frame set out in T.C.A. § 30-2-307, and discussed *supra* at note 1), by its plain language, T.C.A. § 30-2-310(b) in no way extends the time period for the state to file claims or demands against an estate beyond twelve months from the decedent's death. The inclusion of the language "by the state" clearly indicates that subsection (b) of the statute was intended to limit state claims and demands to, at most, twelve months from the decedent's death. Consequently, we cannot extend the *Daugherty* "governmental function" exception to the running of the statute of limitations in this case. Here, Ms. Anderson died on February 21, 2004. The Bureau filed its claim against the Estate on November 14, 2005. As discussed above, there is no proof of insolvency or tax debt, which would trigger exceptions to the twelve-month time limit. From the plain language of T.C.A. § 30-2-310(b), and in light of the facts of this case, we conclude that the trial court correctly barred the Bureau's claim as untimely under T.C.A. § 30-2-310(b). While we have reviewed Appellant's alternate arguments, we find them

unpersuasive in light of the foregoing analysis. Consequently, and in the interest of brevity, we decline to include discussion of those theories herein.

For the foregoing reasons, we affirm the Order of the trial court barring the Bureau's claim as untimely. Costs of this appeal are assessed against the Appellant, Tennessee Bureau of TennCare, and its surety.

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W. FRANK CRAWFORD, JUDGE